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Agri-Mark, Inc.
Arkansas Dairy Cooperative Association
Associated Milk Producers Inc.
Continental Dairy Products, Inc.
Cooperative Milk Producers Association
Dairy Farmers of America, Inc.
Dairymen's Marketing Cooperative, Inc.
Ellsworth Cooperative Creamery
Farmers Cooperative Creamery
FarmFirst Dairy Cooperative
First District Association
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk Producers
Maryland & Virginia Milk Producers Cooperative Association
Michigan Milk Producers Association
Mid-West Dairymen's Company
Northwest Dairy Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto County Cooperative Milk Producers' Association
Select Milk Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative Creamery, Inc.
Swiss Valley Farms Company
Tillamook County Creamery Association
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Zia Milk Producers, Inc.

August 1, 2014

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments; Docket No. FDA-2004-N-0258 (Formerly Docket No. 2004N-0456); RIN 0910-AF23.

Dear Sir or Madam:

The National Milk Producers Federation welcomes the opportunity to provide comments to the Food and Drug Administration (FDA) on the proposed rule "Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments". The National Milk Producers Federation (NMPF), based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies. Visit www.nmpf.org for more information.

NMPF appreciates the efforts of FDA to update both the Nutrition Facts panel and serving sizes of foods. Providing consumers with accurate and meaningful information about foods enables them to make informed nutrition choices and to establish healthful dietary patterns. NMPF respectfully offers the following comments specific to dairy foods.

1. Dual Column Labeling.

FDA has proposed to require dual column labeling for containers with between two and four servings of a food. In some cases, this concept may be sensible. However, in others, it leads to unintended and illogical results. FDA has already proposed an exemption from the requirement for some foods, like butter, that are typically used as

ingredients. NMPF requests that the agency address two additional issues related to dairy foods.

First, the agency should clarify in the final rule that its exemption applies to buttermilk. While earlier generations once consumed buttermilk as a beverage, it is now used almost exclusively as an ingredient, such as in baking. It should clearly fit within the universe of products FDA is proposing to exempt, but a specific acknowledgment of that fact would provide clarity to milk processors. Likewise, other dairy ingredients primarily used as ingredients and should receive recognition as such would include mascarpone, ricotta, and cheeses that are sold in shredded or grated forms.

Second, FDA may not have considered that, since a serving of milk is 8 ounces or one cup, a quart of milk is four servings and therefore would trigger a requirement for dual column labeling. This result seems anomalous in light of FDA's rationale for the dual column requirement. The agency wants to address situations where it is reasonable to expect that people might consume an entire package, even though a serving size is less than the full package. However, NMPF is aware of no evidence that people drink an entire quart of milk at a single setting with any frequency at all. Indeed, the unfortunate decline in fluid milk consumption over recent decades is indicative that average quantities consumed have been shrinking. Thus, to require a label that provides information for the entire container risks misleading consumers. Since no one associates a quart of milk with a single drinking occasion, consumers may infer that the amount of fat (for example) listed for the container is the amount they would consume by drinking one glass of milk, and this may discourage consumption. NMPF would argue similarly for a pint of cottage cheese (which represents four servings) and is not aware of consumption data to suggest such a container size represents a single eating occasion for this food. In fact, with respect to the issue of product density and satiety, NMPF would maintain it is, in fact, unreasonable to expect that a person would consume four servings of either of these nutrient-rich products at a single eating occasion.

NMPF submits that if a proposed regulatory requirement triggers a result which nearly everyone would agree is not realistic, the solution is to modify the requirement. Therefore, **NMPF respectfully requests that FDA exempt dairy foods primarily used as ingredients (butter, mascarpone, ricotta, shredded/grated cheeses), fluid milk in one-quart or larger containers, and cottage cheese in one-pint containers from the dual column labeling requirement.**

2. RACCs for Yogurt and Ice Cream.

FDA has proposed to decrease the Reference Amounts Customarily Consumed (RACCs) for yogurt from 225 grams (approximately 8 ounces) to 170 grams (approximately 6 ounces). This amount is representative of what is currently available in the marketplace; therefore **NMPF supports the comments of the National Yogurt Association citizen petition and FDA's current proposal to reduce the RACC for yogurt.**

FDA has proposed to increase the RACC for ice cream, ice milk, frozen yogurt, sherbet sold in bulk from ½ cup to 1 cup. **NMPF opposes FDA’s proposal to update the RACC for ice cream from the present ½ cup.** FDA states clearly that RACCs will be updated “if the current consumption amount is significantly different from the RACCs established in 1993,” and specifies that this means a change of at least 25 percent. The agency then says that “[f]or a product for which there was not at least a 25 percent difference in consumption, we did not consider updating the 1993 RACC.” This principle is presented to the public without qualification or exception. Only four pages later in the *Federal Register* notice, the agency states its intention to change the ice cream RACC “to 1 cup although, based on the calculations from the current consumption data, the products in the original category (which included ice cream novelties) generally *did not change by at least 25 percent.*” (emphasis added). NMPF submits that the integrity and credibility of a guiding principle such as the agency outlined for RACC changes are undermined if the agency simply chooses to disregard it in the case of a particular product.

Part of FDA’s objective in updating RACCs is to provide Americans with accurate information that is truly reflective of the amounts of food they consume. Additionally, it has been suggested that overconsumption of certain foods has contributed to the obesity epidemic. However, NMPF would be remiss if we did not point out that, since the current serving sizes were first established, per capita consumption of ice cream has significantly and steadily decreased. In 1993, per capita consumption of regular ice cream was 15.0 pounds per person, but fell to 11.5 pounds per person in 2012¹, a decline of over 23%. During that same time period, per capita consumption of all frozen dairy desserts decreased from 26.8 pounds per person to 21 pounds per person, a similar drop of nearly 22%. This consumption data, as well as the amounts consumed in a single eating occasion as calculated by FDA, would strongly indicate that an increase in serving size is not warranted. **Therefore, NMPF recommends no change to the current serving size for ice cream from ½ cup.**

3. Product Category Names: “Milk, milk-based drinks”.

FDA has proposed to change the name of the product category “Milk, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa” to “Milk, milk-substitute beverages, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa, soy beverage”. **NMPF agrees with the change in name as proposed and is gratified to see FDA’s acknowledgement and proper use of the term “soy beverage”.**

Imitation plant-based beverages are all too often misbranded through the misuse of standardized dairy products (e.g., “soy milk”, “rice yogurt”, etc.) in the marketplace. It is FDA’s own lack of enforcement on this issue that has led to the explosive proliferation of misbranding among the products in the dairy imitator category. Further, NMPF believes that the agency’s negligence has directly contributed to a public perception that any beverage bearing the word “milk” as part of its identity statement is

¹ USDA/ERS: *Livestock, Dairy, and Poultry Situation and Outlook* and NMPF.

nutritionally equivalent to milk from dairy cows. As FDA finalizes this rule and prepares guidance documents or other materials to aid industry in implementation of labeling changes, **NMPF would again strongly urge the agency to enforce established food labeling policies, including the statement of identity, specifically for imitation dairy products.** FDA's own use of the term "soy beverage" in the proposed rule indicates its thinking on the names of these imitators; therefore, at the very least, FDA should allocate resources to the development of guidance documents to inform and to clarify to industry its position on standards of identity for these products.

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NMPF welcomes the opportunity to further engage with FDA in helping consumers to make informed food choices and to provide accurate and meaningful label information. Thank you for the opportunity to share our perspectives. Please contact us if you have additional questions.

Sincerely,



Beth Panko Briczinski, PhD
Vice President, Dairy Foods & Nutrition